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TESLA ENERGY OPERATIONS, INC.

9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 PAUL KIRK POLSON, on behalf of  
13 himself and all others similarly situated,

14 Plaintiff,

15 vs.

16 TESLA ENERGY OPERATIONS,  
17 INC., a Delaware corporation; and  
DOES 1 through 10, inclusive,

18 Defendants.  
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Case No.

**DEFENDANT TESLA ENERGY  
OPERATIONS, INC.'S NOTICE  
OF REMOVAL**

[28 U.S.C. §§ 1332, 1441, 1446, and  
1453]

**TO THE CLERK OF THE NORTHERN DISTRICT OF CALIFORNIA AND  
PLAINTIFF AND HIS COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE THAT** Defendant TESLA ENERGY OPERATIONS, INC. (“Defendant” or “Tesla”), by and through its counsel, removes the above-entitled action to this Court from the Superior Court of the State of California, County of Contra Costa, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453. This removal is based on the following grounds:

**I. PROCEDURAL BACKGROUND.**

1. On March 4, 2022, Plaintiff Paul Kirk Polson (“Plaintiff”) filed a class action complaint (“Complaint”) in the Superior Court of the State of California, County of Contra Costa, entitled *Paul Kirk Polson, on behalf of himself and all others similarly situated v. Tesla Energy Operations, Inc., a Delaware corporation; and DOES 1 through 50, inclusive*, Case No. C22-04412 (the “Complaint”).

2. On April 1, 2022, Plaintiff served copies of the Summons, Complaint, Civil Cover Sheet, and Notice of Assignment on the registered agent for Tesla. True and correct copies of these documents are attached hereto as **Exhibit A**. Exhibit A constitutes all the pleadings, process, and orders served upon or filed by Tesla in the Superior Court action.

3. The Complaint seeks damages and penalties on behalf of a putative class for: (1) failure to pay lawful wages; (2) failure to provide lawful meal periods or compensation in lieu thereof; (3) failure to indemnify necessary business expenses; (4) failure to timely pay wages during employment; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; and (7) violations of the Unfair Competition Law. (Ex. A, Compl. ¶¶ 31-65).

4. Plaintiff alleges all Causes of Action individually and on behalf of a putative class of current and former employees. Plaintiff seeks to represent a class defined as “All employees who are or were employed by TESLA in the state of

1 California as hourly non-exempt employees within four (4) years prior to the date  
 2 this lawsuit is filed ("liability period") until resolution of this lawsuit." (Ex. A,  
 3 Compl. ¶ 20).

4 **II. REMOVAL IS TIMELY.**

5 5. Because Tesla is filing this Notice of Removal within thirty days of  
 6 service of the Complaint, it is timely under 28 U.S.C. §§ 1446(b)(3) and 1453. *See*  
 7 *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999). No  
 8 previous Notice of Removal has been filed or made with this Court for the relief  
 9 sought herein.

10 **III. THE COURT HAS ORIGINAL SUBJECT MATTER JURISDICTION**  
 11 **UNDER CAFA.**

12 6. The Complaint is a putative class action.<sup>1</sup> (Ex. A, Compl., ¶ 1, Prayer  
 13 for Relief ¶ 1). Removal under the Class Action Fairness Act ("CAFA") is proper  
 14 pursuant to 28 U.S.C. §§ 1441, 1446, and 1453 because: (i) diversity of citizenship  
 15 exists between at least one putative class member and Tesla, (ii) the aggregate  
 16 number of putative class members in the proposed class is 100 or greater; and (iii)  
 17 the FAC places in controversy more than \$5 million, exclusive of interest and costs.  
 18 28 U.S.C. §§ 1332(d)(2) & (d)(5)(B), 1453.<sup>2</sup> Although Tesla denies Plaintiff's  
 19 factual allegations and denies that Plaintiff—or the class or classes he purports to  
 20 represent—is entitled to the relief requested, based on Plaintiff's allegations in the  
 21 Complaint and prayer for relief, all requirements for jurisdiction under CAFA have  
 22 been met in this case.

23  
 24  
 25 <sup>1</sup> Tesla denies, and reserves the right to contest at the appropriate time, that this  
 26 action can properly proceed as a class action. Tesla further denies Plaintiff's claims  
 27 and denies that he can recover any damages.

28 <sup>2</sup> Tesla denies Plaintiff's factual allegations and denies that Plaintiff and members  
 of the putative class are entitled to any relief whatsoever.

1           **A.     Complete Diversity of Citizenship Exists Between the Parties.**

2           7.     To satisfy CAFA’s diversity requirement, a removing party seeking  
3 removal must establish only that minimal diversity exists, that is, that one putative  
4 class member is a citizen of a state different from any defendant. 28 U.S.C.  
5 § 1332(d)(2); *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus.*  
6 *& Serv. Workers Int’l Union, AFL-CIO, CLC v. Shell Oil Co.*, 602 F.3d 1087, 1090-  
7 91 (9th Cir. 2010) (finding that to achieve its purposes, CAFA provides expanded  
8 original diversity jurisdiction for class actions meeting the minimal diversity  
9 requirement set forth in 28 U.S.C. § 1332(d)(2)).

10          8.     For purposes of diversity of citizenship jurisdiction, citizenship is  
11 determined by the individual’s domicile at the time that the lawsuit is filed.  
12 *Armstrong v. Church of Scientology Int’l*, 243 F.3d 546, 546 (9th Cir. 2000) (citing  
13 *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986)). Evidence of continuing residence  
14 creates a presumption of domicile. *Washington v. Hovensa LLC*, 652 F.3d 340, 395  
15 (3d Cir. 2011); *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 519 (10th Cir.  
16 1994).

17          9.     In his Complaint, Plaintiff alleges that he was employed by Tesla in  
18 California and that he “is and at all times mentioned in this complaint was, a  
19 resident of Contra Costa County, California.” (Ex. A, FAC ¶ 1, 8). The Complaint  
20 does not allege that Plaintiff is a citizen of any other state. Therefore, Plaintiff is a  
21 citizen of California for purposes of diversity jurisdiction. Moreover, Plaintiff has  
22 brought claims on behalf of putative class members, some of whom are currently  
23 employed in California. (Exh. A, Compl. ¶ 20). Thus, Plaintiff and some putative  
24 class members are citizens of California for diversity jurisdiction purposes.

25          10.    For CAFA diversity purposes, a corporation is deemed to be a citizen  
26 of any state in which it has been incorporated and of any state where it has its  
27 principal place of business. 28 U.S.C. § 1332(c)(1). The “principal place of  
28 business” for the purpose of determining diversity subject matter jurisdiction refers

1 to “the place where a corporation’s officers direct, control, and coordinate the  
 2 corporation’s activities . . . [I]n practice it should normally be the place where the  
 3 corporation maintains its headquarters—provided that the headquarters is the actual  
 4 center of direction, control, and coordination, i.e., the ‘nerve center,’ and not simply  
 5 an office where the corporation holds its board meetings . . . .” *See Hertz Corp. v.*  
 6 *Friend*, 559 U.S. 77, 92-93 (2010).

7 11. Defendant Tesla Energy Operations, Inc., is a corporation organized  
 8 under the laws of the State of Delaware. *See* Ex. A, Compl., ¶ 9. Its principal place  
 9 of business and corporate headquarters are in Austin, Texas, where its officers  
 10 direct, control, and coordinate corporate activities.

11 12. As a result, Defendant is now, and was at the time of the filing of this  
 12 action, a citizen of the States of Texas and Delaware within the meaning of the Acts  
 13 of Congress relating to the removal of this action.

14 13. Therefore, diversity of citizenship exists under CAFA because at least  
 15 one member of the putative class is a citizen of a state different than Tesla. 28  
 16 U.S.C. § 1332(d)(2)(A) (requiring only “minimal diversity” under which “any  
 17 member of a class of plaintiffs is a citizen of a State different from any  
 18 Defendant”).

19 **B. The Putative Class Has More Than 100 Members.**

20 14. Plaintiff worked for Tesla in a non-exempt capacity as a Roofer III  
 21 installing solar products. The Complaint alleges its claims on behalf of a class  
 22 defined as “All employees who are or were employed by TESLA in the state of  
 23 California as hourly non-exempt employees within four (4) years prior to the date  
 24 this lawsuit is filed (‘liability period’) until resolution of this lawsuit.” (Ex. A,  
 25 Compl. ¶ 20). Although the complaint uses this broad definition, its allegations  
 26 refer to alleged duties like those performed by Plaintiff. Based on available data,  
 27 Tesla is informed and believes that it employed at least 3,694 non-exempt, full-time  
 28 employees in solar installation-related positions in California during the year

preceding the Complaint's filing. Tesla is further informed and believes from available data that at least 1,295 of these employees separated from Tesla between March 4, 2019 through March 4, 2022. Thus, the putative class contains more than 100 members.

**C. The Amount In Controversy Exceeds \$5,000,000.<sup>3</sup>**

15. Pursuant to CAFA, the claims of the individual members in a class action are aggregated to determine if the amount in controversy exceeds \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(6). Because Plaintiff does not expressly plead a specific amount of class damages, Tesla need only show that it is more likely than not that the amount in controversy exceeds \$5 million. *See Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997). Tesla's burden to establish the amount in controversy is by a preponderance of the evidence. *Dart Cherokee Basin Operating Company, LLC v. Owens*, 135 S. Ct. 547 (2014). A removing party seeking to invoke CAFA jurisdiction "need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *Dart Cherokee*, 135 S. Ct. at 554; *see also Jauregui v. Roadrunner Transportation Services, Inc.*, 2022 WL 804148, at \*4 (9th Cir. Mar. 17, 2022) (reversing district court's remand to state court due to an "inappropriate demand of certitude from [the defendant] over its assumptions used in calculating

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<sup>3</sup> This Notice of Removal addresses the nature and amount of damages that the FAC places in controversy. Tesla refers to specific damages estimates and cites to comparable cases solely to establish that the amount in controversy exceeds the jurisdictional minimum. Tesla maintains that each of Plaintiff's claims lack merit, and that Tesla is not liable to Plaintiff or any putative class member in any amount whatsoever. No statement or reference contained herein shall constitute an admission of liability or a suggestion that Plaintiff will or could actually recover any damages based upon the allegations contained in the FAC or otherwise. "The amount in controversy is simply an estimate of the total amount in dispute, not a prospective assessment of [Tesla's] liability." *Lewis v. Verizon Communs., Inc.*, 627 F.3d 395, 400 (9th Cir. 2010). In addition, Tesla denies that this case is suitable for class treatment.



1 the amount in controversy” for purposes of CAFA removal, and concluding that  
 2 “[the defendant’s] assumptions regarding the number of affected class members and  
 3 the violation rate were reasonable for the various relevant claims.”)

4 16. “[A] removing defendant is not obligated to research, state and prove  
 5 the plaintiff’s claims for damages.” *Sanchez v. Russell Sigler, Inc.*, 2015 WL  
 6 12765359, \*2 (C.D. Cal. April 28, 2015) (citation omitted). *See also LaCross v.*  
 7 *Knight Transportation Inc.*, 775 F.3d 1200, 1203 (9th Cir. 2015) (rejecting  
 8 plaintiff’s argument for remand based on the contention that the class may not be  
 9 able to prove all amounts claimed: “Plaintiffs are conflating the amount in  
 10 controversy with the amount of damages ultimately recoverable.”); *Ibarra v.*  
 11 *Manheim Invs., Inc.*, 775 F.3d 1193, 1198 n.1 (9th Cir. 2015) (in alleging the  
 12 amount in controversy, defendants “are not stipulating to damages suffered, but  
 13 only estimating the damages in controversy.”). The ultimate inquiry is what  
 14 amount a complaint places “in controversy,” not what a defendant may actually  
 15 owe in damages. *LaCross*, 775 F.3d at 1202 (citation omitted) (explaining that  
 16 courts are directed “to first look to the complaint in determining the amount in  
 17 controversy”). *See also Jauregui*, at \*4 (“At that stage of the litigation, the  
 18 defendant is being asked to use the plaintiff’s complaint—much of which it  
 19 presumably disagrees with—to estimate an amount in controversy. This is also at a  
 20 stage of the litigation before any of the disputes over key facts have been  
 21 resolved.”)

22 17. Under *Dart Cherokee*, a removing defendant is not required to submit  
 23 evidence supporting its removal allegations. *Salter v. Quality Carriers, Inc.*, 974  
 24 F.3d 959, 964 (9th Cir. 2020) (“a removing defendant’s notice of removal **need not**  
 25 **contain evidentiary submissions** but only plausible allegations of jurisdictional  
 26 elements.”) (internal quotations omitted) (emphasis added). The removal  
 27 allegations “may rely on ‘a chain of reasoning that includes assumptions’ and ‘an  
 28 assumption may be reasonable if it is founded on the allegations of the complaint.’”

1 *Marano v. Liberty Mut. Grp., Inc.*, 2021 WL 129930, at \*2 (C.D. Cal. Jan. 14,  
 2 2021) (quoting *Arias v. Residence Inn by Marriott*, 2019 WL 4148784, at \*4 (9th  
 3 Cir. Sept. 3, 2019)). Where the plaintiff “could have, but did not, make more  
 4 specific allegations to narrow the scale or scope of th[e] controversy,” courts “have  
 5 assumed 100% violation rates” based on the complaint’s “sweeping allegations.”  
 6 *Id.* at \*3. As detailed below, Tesla plausibly alleges that the amount in controversy  
 7 exceeds \$5 million based on Plaintiff’s sweeping allegations, and that the Court has  
 8 jurisdiction pursuant to CAFA. When the claims of the putative class members in  
 9 the present case are aggregated, their claims put into controversy over \$5 million in  
 10 potential damages. 28 U.S.C. § 1332(d)(2).

11 18. Although Tesla denies Plaintiff’s factual allegations and denies that he  
 12 or the class or subclasses he seeks to represent are entitled to the relief for which he  
 13 has prayed, Plaintiff’s allegations and prayer for relief have “more likely than not”  
 14 put into controversy an amount that exceeds the \$5 million threshold when  
 15 aggregating the claims of the putative class members as set forth in 28 U.S.C. §  
 16 1332(d)(6).<sup>4</sup>

17 19. As explained above, Plaintiff seeks to represent a putative class of  
 18 more than 3,694 members. Tesla has reviewed certain data concerning the putative  
 19 class that Plaintiff seeks to represent. Based on the allegations in the Complaint,  
 20

21  
 22 <sup>4</sup> This Notice of Removal discusses the nature and amount of damages placed at  
 23 issue by Plaintiff’s Complaint. Tesla’s references to specific damage amounts and  
 24 citation to comparable cases are provided solely for establishing that the amount in  
 25 controversy is more likely than not in excess of the jurisdictional minimum. Tesla  
 26 maintains that each of Plaintiff’s claims is without merit and that Tesla is not liable  
 27 to Plaintiff or any putative class member. Tesla expressly denies that Plaintiff or  
 28 any putative class member is entitled to recover any of the penalties sought in the  
 Complaint. In addition, Tesla denies that liability or damages can be established on  
 a class-wide basis. No statement or reference contained herein shall constitute an  
 admission of liability or a suggestion that Plaintiff will or could actually recover  
 any damages based upon the allegations contained in the Complaint or otherwise.  
 “The amount in controversy is simply an estimate of the total amount in dispute,  
 not a prospective assessment of [Tesla’s] liability.” *Lewis v. Verizon Communs.,*  
*Inc.*, 627 F.3d 395, 400 (9th Cir. 2010).



1 Plaintiff has put more than \$5 million in controversy as set forth below, and CAFA  
2 removal is appropriate.

3 **1. Plaintiff's First Cause of Action for Overtime and**  
4 **Minimum Wages Put at Least \$2,433,097.50 in**  
5 **Controversy.**

6 20. The Complaint alleges that Tesla “implemented policies and practices  
7 which resulted in Plaintiff and Non Exempt Employees working off the clock and  
8 without compensation.” (Ex. A, Compl. ¶¶ 13). Plaintiff alleges that he and the  
9 alleged class members “were required to attend safety meetings prior to clocking in  
10 to begin work” and “to undergo numerous hours of training off the clock.” *Id.*  
11 Plaintiff alleges such uncompensated work caused him and others to work in excess  
12 of eight (8) hours in a workday and/or forty (40) hours in a workweek without proper  
13 compensation for such overtime work. (Ex. A, Compl., ¶¶ 13, 31-33).

14 20. Labor Code section 510 requires that any work “in excess of eight  
15 hours in one workday” must be compensated “at the rate of no less than one and  
16 one-half times the regular rate of pay for an employee.” Cal. Lab. Code § 510(a).  
17 Labor Code section 1194 requires that any employee “receiving less than the legal  
18 minimum wage or the legal overtime compensation applicable to the employee is  
19 entitled to recover in a civil action the unpaid balance of the full amount of this  
20 minimum wage or overtime compensation...” Cal. Lab. Code § 1194. The  
21 complaint seeks these damages on behalf of “Plaintiff and the Class he seeks to  
22 represent...” (Ex. A, Compl., ¶ 34).

23 21. Tesla’s review of available data indicates at least 122,420 total weeks  
24 worked from March 4, 2018 through March 31, 2022 by non-exempt solar  
25 installation employees of Tesla in California. Tesla is informed and believes that  
26 the normal shift length for these employees is 8 hours, and that the average hourly  
27 wage for this group is \$26.50.

28 22. The Ninth Circuit has held that for calculating the amount in  
controversy for a minimum wage claim, an assumption of one hour of unpaid work

per workweek is reasonable. *Jauregui*, at \*5. Here, using an even more conservative assumption that Plaintiff is alleging that putative Class Members are on average due 30 minutes of unpaid overtime per week for alleged daily pre-shift safety meetings and “numerous hours of training” that they allegedly worked off the clock, and using the average hourly rate of \$26.50 for the 3,694 employees at issue here, Plaintiff’s first cause of action places at least \$2,433,097.50 in controversy:  $\$26.50 \text{ per hour} \times 1.5 \times 0.5 \text{ hours} \times 122,420 \text{ work weeks} = \text{\$2,433,097.50}$ .

**2. Plaintiff’s Second Cause of Action for Failure to Provide Meal Periods Places at Least \$2,773,839.80 in Controversy.**

20. Plaintiff alleges that “During the liability period, due to the work load requirements and time constraints imposed by Defendant during each shift, Plaintiff and Class Members were required to work in excess of five (5) hours without a minimum, uninterrupted thirty (30) minute meal period and were not compensated one (1) hour of pay at their regular rate of compensation for each workday that a compliant meal period was not provided...” (Exh. A, Compl. ¶ 14). Plaintiff further alleges that his “meal periods were interrupted and, in some circumstances, taken after working at least five hours due to the requirements of the roofing project he was working on at that time.” (*Id.*).

21. Labor Code § 512(a) states that non-exempt employees must be provided an uninterrupted meal period of not less than 30 minutes for a work period of more than five hours. Labor Code § 226.7(b) states that if an employer fails to provide an employee a meal or rest period in accordance with state law, the employer shall pay the employee one additional hour of pay for each workday that the meal or rest period is not provided. The Complaint alleges that Tesla failed to pay Plaintiff and Class Members this additional hour of pay when required meal periods were not provided. (Exh. A, Compl., ¶¶ 14).

22. Tesla’s review of data showed at least 523,366 shifts worked from

1 March 4, 2018 through March 31, 2022 by non-exempt solar installation employees  
 2 of Tesla in California. Tesla is informed and believes that such employees' work  
 3 days generally consisted of more than five hours per day.

4 23. For purposes of assessing the amount in controversy, Plaintiff's  
 5 allegations support a 100% violation rate with respect to claims of unprovided meal  
 6 periods. *Muniz v. Pilot Travel Centers LLC*, No. CIV.S-07-0325 FCD EFB, 2007  
 7 WL 1302504 (E.D. Cal. May 1, 2007) (where plaintiff does not allege facts specific  
 8 to the circumstances of allegedly missed meal and/or rest periods, defendant may  
 9 use 100% violation rate in calculating the amount in controversy). Nevertheless,  
 10 Tesla uses only a conservative assumption that Plaintiff's allegations place damages  
 11 in controversy based on an average of one alleged unprovided meal period for every  
 12 five shifts worked per employee. Therefore, using the average hourly rate of  
 13 \$26.50 for each allegedly similarly situated employee, the first cause of action  
 14 places at least \$2,773,839.80 in controversy: 523,366 total shifts worked in excess  
 15 of five hours x 0.2 x \$26.50 per hour = **\$2,773,839.80**.

16 **3. Plaintiff's Fourth Cause of Action for Failure to Reimburse**  
 17 **Employee Expenses Puts at Least \$791,075 in Controversy.**

18 24. Plaintiff alleges that Tesla "required Plaintiff and Non-Exempt  
 19 employees to use their personal cell phones to download and view roof schematics,  
 20 to communicate with supervisors and employees, to clock in and out, and to keep  
 21 track of working hours and scheduling. Furthermore, Defendant required Plaintiff  
 22 and Non-Exempt employees to use their personal home computers and personal  
 23 home internet services to download or stream training videos." (Ex. A, FAC ¶ 17).  
 24 The FAC does not allege the amounts sought for these expenses, but Plaintiff  
 25 alleges that he and the Class "were not reimbursed for these expenses." (*Id.*).

26 25. Plaintiff's allegations of "policies and practices" causing a failure to  
 27 provide reimbursement of cell phone, personal computer, and home internet  
 28 expenses to putative class members permits Tesla to reasonably assume for

purposes of removal “that each putative class member could recover unreimbursed expenses for every month worked.” *Anderson v. Starbucks Corp.*, No. 3:20-CV-01178-JD, 2020 WL 7779015, at \*4 (N.D. Cal. Dec. 31, 2020). In *Anderson*, the district court held that a monthly cell phone reimbursement of \$32.50 per employee was a “reasonable basis for estimating” the amount in controversy on a cell phone reimbursement claim, and conservatively represents a recovery that would be “less than a full recovery of the monthly plan fee . . . .” *Id.* For purposes of this removal, Tesla uses an even more conservative assumption that Plaintiff is seeking an average monthly recovery of \$25.00 per employee for all three types of expenses claimed (cell phone, personal computer, and home internet).

26. Here, Tesla is informed and believes that there are 31,643 months worked by full-time non-exempt employees in solar installation-related positions in California during the time period in question. Assuming \$25.00 in alleged unpaid reimbursements per month, Plaintiff’s fourth cause of action for failure to indemnify employees for necessary expenses places at least \$791,075 in controversy: \$25 monthly expenses x 31,643 work months = **\$791,075**.

**4. Plaintiff’s Fifth Cause of Action for Failure to Pay All Wages Due at Termination Places at Least \$8,236,200 in Controversy.**

27. Plaintiff alleges that “More than 30 days have passed since Plaintiff and affected Class Members have left Defendant’s employ, and on information and belief, have not received payment pursuant to Labor Code § 203.” (Exh. A, Compl. ¶ 52). Plaintiff further alleges that, “As a consequence of Defendant’s willful conduct in not paying all earned wages, certain Class Members are entitled to 30 days’ wages as a penalty under Labor Code section 203 for failure to pay legal wages. (*Id.*)

28. Labor Code § 203 provides that an employer who willfully fails to timely pay wages to an employee who is discharged or quits, must pay, as a penalty, the “the wages of the employee . . . from the due date thereof . . . until paid

1 or until an action therefor is commenced; but the wages shall not continue for more  
2 than 30 days.”

3  
4 27. During the three-year statute of limitations period applicable to a  
5 Section 203 claim, Tesla is informed and believes that at least 1,295 full-time non-  
6 exempt employees in solar installation-related positions in California separated  
7 their employment with Tesla more than 30 days before the Complaint was filed.  
8 The Complaint alleges that all overtime and minimum wages and “compensation  
9 for non-provided rest and meal periods” earned have not been received by class  
10 members who are no longer employed by Tesla, and indeed it seeks those alleged  
11 wages and premiums as damages as to all putative class members. (Ex. A, Compl.,  
12 ¶ 51). Based on Plaintiff’s allegations, it is appropriate to use a 100% violation rate  
13 for waiting time penalties to calculate the amount in controversy. *See Ford v. CEC*  
14 *Entm’t, Inc.*, 2014 WL 3377990 (N.D. Cal. 2014) (“Assuming a 100% violation  
15 rate is thus reasonably grounded in the complaint . . . [b]ecause no averment in the  
16 complaint supports an inference that these sums were ever paid.”). *See also*  
17 *Jauregui*, 2022 WL 804148, at \*4 (“But it was not unreasonable for [defendant] to  
18 assume that the vast majority (if not all) of the alleged violations over the *four*  
19 *years* at issue in this case would have happened more than 30 days before the suit  
20 was filed, which would entitle the employees to the 30-day penalty.”) (emphasis in  
21 original).

22 29. Using the average hourly rate of \$26.50 per hour, the Complaint puts  
23 in controversy Labor Code Section 203 waiting time penalties of \$6,360 per  
24 terminated employee (\$26.50 x 8 hours per day x 30 days), or at least **\$8,236,200** in  
25 the aggregate (\$6,360 x 1,295 employees).

26 **5. Plaintiff’s Seventh Cause of Action for Failure to Furnish**  
27 **Accurate Itemized Wage Statements Puts at Least \$6,831,150**  
28 **in Controversy.**

31. Plaintiff alleges that Tesla “failed to maintain accurate itemized

1 records reflecting total hours worked and have failed to provide Non Exempt  
 2 Employees with accurate, itemized wage statements reflecting total hours worked  
 3 and appropriate rates of pay for those hours worked.” (Ex. A, Compl. ¶¶ 16).  
 4 Because Plaintiff alleges that Tesla violated Labor Code Section 226(a)(8) by  
 5 “failing to accurately report total hours worked by Plaintiff and the proposed class,”  
 6 failing to “show all deductions and reimbursements from payment of wages,” and  
 7 other alleged violations, it is appropriate to use a 100% violation rate to calculate  
 8 the amount in controversy for this claim.

9 32. Labor Code section 226(e) provides that an employee can recover the  
 10 greater of all actual damages or \$50 for the initial violation and \$100 per pay period  
 11 for each subsequent violation, up to a maximum penalty of \$4,000, plus costs and  
 12 reasonable attorneys’ fees, if an employer knowingly and intentionally fails to  
 13 provide an accurate, itemized wage statement. Cal. Labor Code § 226(e).

14 33. Here, during the relevant one-year statute of limitations period, Tesla  
 15 provided wage statements to Plaintiff and to putative class members on a weekly  
 16 basis. During the period of March 4, 2021 to March 31, 2022, Tesla is informed  
 17 and believes that it issued weekly wage statements to at least 2,618 full-time non-  
 18 exempt employees in solar installation-related positions in California during the  
 19 one-year limitations period applicable to this claim. Of these employees, Tesla is  
 20 informed and believes that 1,071 of them worked 41 or more weeks as of March 31,  
 21 2022, which would place the maximum \$4,000 penalty in controversy for each of  
 22 them, totalling \$4,284,000. Tesla is further informed and believes that Tesla issued  
 23 approximately 26,243 wage statements to the other 1,543 full-time non-exempt  
 24 employees in solar installation-related positions in California who worked fewer  
 25 than 41 weeks during the above period. Thus, Plaintiff’s seventh cause of action  
 26 for failure to provide accurate wage statements puts \$6,831,150 in controversy for  
 27 this claim: (1,543 employees during the applicable period x \$50 penalty for initial  
 28



1 pay period) + (24,700 subsequent pay periods x \$100 penalty) + (1,071 employees  
2 x \$4,000 maximum penalty) = total claimed penalties of **\$6,831,150**.

### 3 **6. The Amount in Controversy Exceeds \$5 Million.**

4 34. Aggregating the figures above for these causes of action, Plaintiff's  
5 alleged amount in controversy is at least \$21,065,362.30 (\$2,433,097.50 +  
6 \$2,773,839.80 + \$791,075 + \$8,236,200 + \$6,831,150) based on the allegations in  
7 the claims discussed above. Thus, the CAFA \$5 million requirement is satisfied  
8 based on these claims alone, even without the need to assess the value of Plaintiff's  
9 Fourth Cause of Action (failure timely pay wages during employment), or to value  
10 Plaintiff's claim for failure to "pay Plaintiff and Non-Exempt employees their  
11 regular rate of pay when Plaintiff and Non-Exempt employees worked overtime  
12 hours and received non-discretionary bonus earnings." (Ex. A, Compl., ¶ 15).

### 13 **7. Plaintiff's Request for Attorneys' Fees Places Additional** 14 **Amounts in Controversy, Further Exceeding the CAFA** **Threshold.**

15 35. Plaintiff seeks to recover attorneys' fees under various provisions of  
16 the Labor Code, including section 226. (Ex. A, Compl. ¶¶ 5, 34, 43; Prayer for  
17 Relief, ¶6). Future attorneys' fees are properly included in determining the amount  
18 in controversy, including for class actions seeking fees under Labor Code Section  
19 226. *See Fritsch v. Swift Transportation Co. of Arizona, LLC*, 899 F.3d 785, 793–  
20 94 (9th Cir. 2018) ("Because the law entitles [the plaintiff] to an award of  
21 attorneys' fees if he is successful, such future attorneys' fees are at stake in the  
22 litigation, and must be included in the amount in controversy."). Courts in the  
23 Ninth Circuit "have treated a potential 25% fee award as reasonable" in wage and  
24 hour class actions removed under CAFA. *See Anderson*, 2020 WL 7779015, at \*4.

25 36. Although Tesla denies Plaintiff's claim for attorneys' fees, inclusion of  
26 "reasonable" attorneys' fees for purposes of removal adds another \$5,266,340.58 in  
27 controversy (25% of \$21,065,362.30), bringing the total amount in controversy to  
28 at least **\$26,331,702.88**.

37. Therefore, although Tesla has plausibly alleged that the amount in controversy without attorneys' fees exceeds \$5,000,000, the inclusion of attorneys' fees as allowed by Ninth Circuit law further increases the amount in controversy above the minimum threshold for CAFA jurisdiction.

#### IV. VENUE

38. This action was originally filed in the Superior Court for the County of Contra Costa. Initial venue is therefore proper in this district, pursuant to 28 U.S.C. § 1441(a), because it encompasses the county in which this action is pending.

#### V. NOTICE

39. Tesla will promptly serve this Notice of Removal on all parties and will promptly file a copy of this Notice of Removal with the clerk of the state court in which the action is pending, as required under 28 U.S.C. § 1446(d).

#### VI. CONCLUSION

40. Based on the foregoing, Tesla requests that this action be removed to this Court. If any question arises as to the propriety of the removal of this action, Tesla respectfully requests the opportunity to present a brief and oral argument in support of its position that this case is subject to removal.

Dated: May 2, 2022

MORGAN, LEWIS & BOCKIUS LLP

By /s/ John S. Battenfeld

John S. Battenfeld  
Tuyet T. Nguyen Lu  
Daniel R. Rodriguez  
Attorneys for Defendant  
TESLA ENERGY OPERATIONS,  
INC.

# **EXHIBIT A**



**Service of Process  
Transmittal**

04/01/2022

CT Log Number 541334117

**TO:** LEGAL DEPARTMENT - SOP  
TESLA, INC.  
901 PAGE AVE  
FREMONT, CA 94538-7341

**RE: Process Served in California**

**FOR:** Tesla Energy Operations, Inc (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Re: Paul Kirk Polson on behalf of himself and all others similarly situated // To: Tesla Energy Operations, Inc

**DOCUMENT(S) SERVED:** Summons, Complaint, Cover Sheet, Attachment, Notice

**COURT/AGENCY:** Contra Costa County - Superior Court - Martinez, CA  
Case # C2200412

**NATURE OF ACTION:** Employee Litigation - Class action - Complaint regarding failure to pay lawful wages (Refer document for additional information)

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, GLENDALE, CA

**DATE AND HOUR OF SERVICE:** By Process Server on 04/01/2022 at 12:56

**JURISDICTION SERVED :** California

**APPEARANCE OR ANSWER DUE:** Within 30 calendar days after this summons and legal papers are served on you (Document(s) may contain additional answer dates)

**ATTORNEY(S) / SENDER(S):** Kacey E. Cook, Esq.  
James Hawkins APLC  
9880 Research Drive, Suite 200  
Irvine, CA 92618  
949-387-7200

**ACTION ITEMS:** CT has retained the current log, Retain Date: 04/01/2022, Expected Purge Date: 04/06/2022  
  
Image SOP  
  
Email Notification, LEGAL DEPARTMENT - SOP [legalsop@tesla.com](mailto:legalsop@tesla.com)

**REGISTERED AGENT ADDRESS:** C T Corporation System  
330 N BRAND BLVD  
STE 700  
GLENDALE, CA 91203  
877-564-7529  
[MajorAccountTeam2@wolterskluwer.com](mailto:MajorAccountTeam2@wolterskluwer.com)

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other



**Service of Process  
Transmittal**

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**RE: Process Served in California**

**FOR:** Tesla Energy Operations, Inc (Domestic State: DE)

advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.



## PROCESS SERVER DELIVERY DETAILS

**Date:**

Fri, Apr 1, 2022

**Server Name:**

Douglas Forrest

Entity Served	TESLA ENERGY OPERATIONS, INC.
Case Number	C2200412
Jurisdiction	CA

Inserts		





# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

TESLA ENERGY OPERATIONS, INC., a Delaware corporation; and DOES 1 through 50, inclusive,

## YOU ARE BEING SUED BY PLAINTIFF: (LO ESTA DEMANDANDO EL DEMANDANTE):

PAUL KIRK POLSON on behalf of himself and all others similarly situated

**FILED** SUM-100  
FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

2022 MAR -4 A 10:46

KATE BIEKER  
CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CA

By: C. JACALA, DEPUTY CLERK

NOTICE: You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO:** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Wakefield Taylor Courthouse  
725 Court Street  
Martinez, CA 94553

CASE NUMBER (Número del caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

James Hawkins APLC, 15500 Bessie Dr., Suite 200, Irvine, CA 92618; 949-387-7200

DATE:

(Fecha)

Clerk by

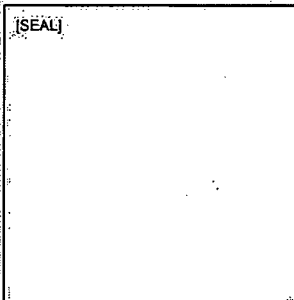
(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario: Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant

2. ☐ as the person sued under the fictitious name of (specify)

3. ☒ on behalf of (specify): **Tesla Energy Operations**

under: ☒ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☒ by personal delivery on (date)

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

Page 1 of 1

COPY

**FILED**

2022 MAR -4 A 10:45

KATE BIEKER  
CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CA  
BY: C. JACALA, DEPUTY CLERK

James R. Hawkins, Esq. SBN 192925  
Isandra Fernandez, Esq. SBN 220482  
Kacey E. Cook, Esq. SBN 337905  
**JAMES HAWKINS APLC**  
9880 Research Drive, Suite 200  
Irvine, CA 92618  
TEL: (949) 387-7200  
FAX: (949) 387-6676

Attorneys for Plaintiff, PAUL KIRK POLSON  
on behalf of himself and all others similarly situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF CONTRA COSTA**

PAUL KIRK POLSON on behalf of himself  
and all others similarly situated

Plaintiff,

vs.

TESLA ENERGY OPERATIONS, INC., a  
Delaware corporation; and DOES 1 through 50,  
inclusive;

Defendant.

PER LOCAL RULE THIS  
CASE IS ASSIGNED TO  
DEPT. 37  
FOR ALL  
PURPOSES

Case No.

ASSIGNED FOR ALL PURPOSES TO:  
JUDGE:

DEPT: C22-00412

**CLASS ACTION COMPLAINT**

- 1) Failure to Pay Lawful Wages
- 2) Failure to Provide Lawful Meal  
Periods or Compensation in Lieu  
Thereof
- 3) Failure to Reimburse Employee  
Expenses
- 4) Failure to Timely Pay Wages During  
Employment
- 5) Failure to Timely Pay Wages at  
Termination
- 6) Failure to Provide Accurate, Itemized  
Wage Statements
- 7) Violations of the Unfair Competition  
Law

**JURY TRIAL DEMANDED**

**COPY**

1 Plaintiff PAUL KIRK POLSON on behalf of himself and all others similarly situated assert  
2 claims against Defendant TESLA ENERGY OPERATIONS, INC., and DOES 1 through 50,  
3 inclusive (hereinafter collectively referred to as "Defendant") as follows:

4 I.

5 **INTRODUCTION**

6 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, brought  
7 against Defendant TESLA ENERGY OPERATIONS, INC. and any subsidiaries and affiliated  
8 companies (hereinafter "TESLA" or "Defendant") on behalf of Plaintiff PAUL KIRK POLSON  
9 (hereinafter "Plaintiff") and all employees not classified as "Exempt" or primarily employed in  
10 executive, professional, or administrative capacities, employed by, or formerly employed by  
11 TESLA in California. (hereinafter referred to as "Non-Exempt Employees" and/or "Class  
12 Members").

13 2. During the liability period, defined as the applicable statute of limitations for each  
14 and every cause of action contained herein, Defendant enforced shift schedules, employment  
15 policies and practices, and workload requirements wherein Plaintiff and all other Non-Exempt  
16 Employees: (1) were not paid proper wages they earned for all hours they worked including  
17 proper minimum and overtime compensation; (2) were not permitted to take their full statutorily  
18 authorized meal periods, or had their meal periods shortened or provided to them late due to the  
19 scheduling and work load and time requirements placed upon them by Defendant. Defendant  
20 failed to pay such employees one (1) hour of pay at the employees regular rate of compensation  
21 for each workday that the meal period that was not properly provided; and employees were not  
22 properly reimbursed for out-of-pocket expenses.

23 3. During the liability period, Defendant have failed to reimburse Class Members for  
24 business expenses incurred in the performance of their job duties.

25 4. During the liability period, Defendant have also failed to maintain accurate  
26 itemized records reflecting total hours worked and have failed to provide Non Exempt  
27 Employees with accurate, itemized wage statements reflecting total hours worked and  
28 appropriate rates of pay for those hours worked.

5. Plaintiff, on behalf of himself and all Class Members, brings this action pursuant to Labor Code sections 201, 202, 203, 204, 210, 221, 225, 226, 226.7, 510, 512, 1194, 1198, 1199, 2802, California Code of Regulations, Title 8, section 11160 *et seq.* and any other applicable Industrial Welfare Commission (“IWC”) Wage Orders, seeking unpaid lawful wages, unpaid meal period compensation, penalties and other equitable relief, and reasonable attorneys’ fees and costs.

6. Plaintiff, on behalf of himself and others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seeks restitution from Defendant for their failure to pay all overtime wages and rest and meal period premiums to each of their Non-Exempt Employees.

## II.

## VENUE

7. Venue as to each Defendant is proper in this judicial district pursuant to Code of Civil Procedure section 395. Defendant conducts substantial and continuous commercial activities in Contra Costa County, California and each Defendant is within the jurisdiction of this Court for service of process purposes. Defendant employ numerous Class Members in Contra Costa County, California.

### III.

**PARTIES**

8. Plaintiff is, and at all times mentioned in this complaint was, a resident of Contra Costa County, California.

9. Defendant TESLA is a Delaware corporation which is headquartered in Palo Alto, California.

10. The true names and capacities of Defendant, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendant by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and based thereon alleges that each of the Defendant designated herein as a DOE is legally responsible in some manner for the unlawful

1 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the  
2 true names and capacities of the Defendant designated hereinafter as DOES when such identities  
3 become known.

4 11. Plaintiff is informed and believes, and based thereon alleges, that Defendant acted  
5 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint  
6 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant  
7 are legally attributable to the other Defendant.

8 **IV.**

9 **FACTUAL BACKGROUND**

10 12. Plaintiff was employed by TESLA from approximately October 2020 until  
11 approximately March, 2021. During his employment with Defendant, Plaintiff occupied a non-  
12 exempt position as an Installer.

13 13. During the liability period, Defendant implemented policies and practices which  
14 resulted in Plaintiff and Non Exempt Employees working off the clock and without  
15 compensation. For instance, before clocking in, Plaintiff and Non-Exempt employees were  
16 required to attend safety meetings prior to clocking in to begin work. Plaintiff was not  
17 compensated for the work performed "off the clock" prior to the scheduled start of the shift.  
18 Furthermore, Defendant required Plaintiff and Non-Exempt employees to undergo numerous  
19 hours of training off the clock. Plaintiff was not compensated for this work performed "off the  
20 clock".

21 14. During the liability period, due to the work load requirements and time constraints  
22 imposed by Defendant during each shift, Plaintiff and Class Members were required to work in  
23 excess of five (5) hours without a minimum, uninterrupted thirty (30) minute meal period and  
24 were not compensated one (1) hour of pay at their regular rate of compensation for each workday  
25 that a compliant meal period was not provided, in violation of California labor laws, regulations  
26 and IWC Wage Order. For instance, Plaintiff's meal periods were interrupted and, in some  
27 circumstances, taken after working at least five hours due to the requirements of the roofing  
28 project he was working on at that time.



15. During the liability period, Defendant failed to pay Plaintiff and Non-Exempt employees their regular rate of pay when Plaintiff and Non-Exempt employees worked overtime hours and received non-discretionary bonus earnings. Plaintiff and Non-Exempt employees regularly worked approximately twenty (20) hours of overtime each week.

16. Defendant have also failed to maintain accurate itemized records reflecting total hours worked and have failed to provide Non Exempt Employees with accurate, itemized wage statements reflecting total hours worked and appropriate rates of pay for those hours worked.

17. Defendant required Plaintiff and Non-Exempt employees to use their personal cell phones to download and view roof schematics, to communicate with supervisors and employees, to clock in and out, and to keep track of working hours and scheduling. Furthermore, Defendant required Plaintiff and Non-Exempt employees to use their personal home computers and personal home internet services to download or stream training videos. Plaintiff and on information and belief Non-Exempt employees were not reimbursed for these expenses.

18. Plaintiff is informed and believes, and based thereon alleges, that Defendant currently employ and during the relevant period have employed over one hundred (100) employees in the State of California in non-exempt hourly positions.

19. Non-Exempt Employees employed by TESLA, at all times pertinent hereto, have been non-exempt employees within the meaning of the California Labor Code, and the implementing rules and regulations of the IWC California Wage Orders.

V.

## CLASS ACTION ALLEGATIONS

20. Plaintiff seeks to represent a Class comprised of and defined as: All employees who are or were employed by TESLA in the state of California as hourly non-exempt employees within four (4) years prior to the date this lawsuit is filed (“liability period”) until resolution of this lawsuit (collectively referred to as the “Class” and/or Class Members”).

21. Plaintiff also seeks to represent Subclasses which are composed of persons satisfying the following definitions:

a. All Class Members employed by TESLA in the state of California as



1 hourly non-exempt employees and were not accurately and fully paid all lawful wages owed to  
2 them including proper overtime compensation and/or minimum wages for all their hours worked;

3           b. All Class Members employed by TESLA in the state of California as  
4 hourly non-exempt employees who, within the liability period, have not been provided an  
5 uninterrupted 30-minute meal period when they worked over five hours in a work shift and were  
6 not provided compensation in lieu thereof;

7           c. All Class Members employed by TESLA in the state of California as  
8 hourly non-exempt employees who, within the liability period, were not provided with accurate  
9 and complete itemized wage statements;

10           d. All Class Members employed by TESLA in the state of California who,  
11 within the liability period, were not timely paid all wages due and owed to them during their  
12 employment with Defendant; and

13           e. All Class Members employed by TESLA in the state of California who,  
14 within the liability period, were not timely paid all wages due and owed to them at their time of  
15 termination with Defendant.

16           22. Plaintiff further seeks to represent a subclass for all employees of TESLA in the  
17 state of California who, within the liability period, did not receive full reimbursement for  
18 employee expenses ("Expense Reimbursement Class").

19           23. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend  
20 or modify the class description with greater specificity or further division into subclasses or  
21 limitation to particular issues.

22           24. This action has been brought and may properly be maintained as a class action  
23 under the provisions of section 382 of the Code of Civil Procedure because there is a well-  
24 defined community of interest in the litigation and the proposed Class is easily ascertainable.

25           **A. Numerosity**

26           25. The potential members of the Class as defined are so numerous that joinder of all  
27 the members of the Class is impracticable. While the precise number of Class Members has not  
28 been determined at this time, Plaintiff is informed and believes that Defendant currently employ,

1 and/or during the relevant time period employed, approximately over 100 Non-Exempt  
 2 Employees in California who are or have been affected by Defendant' unlawful practices as  
 3 alleged herein.

4 **B. Commonality**

5 26. There are questions of law and fact common to the Class predominating over any  
 6 questions affecting only individual Class Members. These common questions of law and fact  
 7 include, without limitation:

- 8 i. Whether Defendant violated Labor Code §§ 510, 1194 and applicable IWC Wage Orders  
 9 by failing to pay all earned wages including overtime compensation to Non-Exempt  
 10 Employees who worked in excess of eight (8) hours in a workday and/or more than forty  
 11 (40) hours in a workweek;
- 12 ii. Whether Defendant also violated Labor Codes sections 200, 1194, and 1197 for failing to  
 13 pay minimum wages for time spent under the Defendant' control and working "off the  
 14 clock" without pay;
- 15 iii. Whether Defendant violated Labor Code §§ 226.7, 512 and applicable IWC Wage Order  
 16 by failing to provide statutorily compliant 30-minute meal periods to Non-Exempt  
 17 Employees on days in which they worked more than 10 hours and failing to compensate  
 18 said employees one hour's wages in lieu of meal periods;
- 19 iv. Whether Defendant violated Labor Code § 2802 and applicable IWC Wage Orders for  
 20 failing to indemnify employees for the expenditures incurred in the performance of their  
 21 job duties;
- 22 v. Whether Defendant violated Labor Code § 226 and applicable IWC Wage Orders by  
 23 failing to, among other violations, maintain accurate records of Non-Exempt Employees'  
 24 earned wages, work periods, meal periods and deductions;
- 25 vi. Whether Defendant violated § 210 of the Labor Code by failing to pay all earned wages  
 26 and/or premium wages due and owing when such wages were due and payable;
- 27 vii. Whether Defendant violated section 17200 *et seq.* of the Business and Professions Code  
 28 and Labor Code sections §§ 201, 202, 203, 204, 210, 221, 225, 226, 226.7, 510, 512,

1194, 1199, 2802 and applicable IWC Wage Orders, violation of which constitutes a violation of fundamental public policy;

**C. Typicality**

27. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff and all members of the Class sustained injuries and damages arising out of and caused by Defendant's common course of conduct in violation of California laws, regulations, and statutes as alleged herein.

**D. Adequacy of Representation**

28. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represents Plaintiff is competent and experienced in litigating large employment class actions.

**E. Superiority of Class Action**

29. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendant's unlawful policy and/or practice herein complained of.

30. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

**VI.**

**CAUSES OF ACTION**

**First Cause of Action**

Failure to Pay Lawful Wages Including Overtime and Minimum Wage  
(Lab. Code §§ 510, 1194, 1199)  
(Against All Defendant)

31. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

32. During the liability period, Defendant' policies and/or practices resulted in Plaintiff and Non-Exempt Employees working off the clock and in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without receiving the proper compensation at the rate of time and one-half (1 1/2) of such employee's regular rate of pay.

33. As alleged herein, during the statutory liability period, Defendant' policies and/or practices resulted in Plaintiff and Non-Exempt Employees not receiving minimum wages for time spent working "off the clock" while subject to the control of Defendant all without pay. Labor Code § 1197 provides that employees are to be paid minimum wage for each hour worked.

34. As a result of the unlawful acts of Defendant, Plaintiff and the Class he seeks to represent have been deprived of compensation for all earned wages including minimum wage and overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code section 1194 .

35. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described herein and below.

**Second Cause of Action**

Failure to Provide Lawful Meal Periods  
Or Compensation in Lieu Thereof  
(Lab. Code §§ 226.7, 512, IWC Wage Orders)  
(Against All Defendant)

36. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

37. As alleged herein, by failing to provide 30-minute uninterrupted meal periods for days on which Non-Exempt employees work(ed) work periods more than 5 hours and failing to provide compensation for such statutorily non-compliant meal periods, Defendant violated the provisions of Labor Code § 512 and applicable IWC Wage Orders.

38. By failing to record and maintain adequate and accurate time records according to sections 226 and 1174(d) of the Labor Code, Defendant have injured Plaintiff and Class Members and made it difficult to calculate the unpaid meal period compensation due Plaintiff and Class Members.

1           39. As a result of the unlawful acts of Defendant, Plaintiff, and the Class he seeks to  
2 represent, have been deprived of premium wages in amounts to be determined at trial, and are  
3 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code §  
4 226.7.

5           40. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as  
6 described herein and below.

7                           **Third Cause of Action**  
8                           Failure to Reimburse Employee Expenses  
9                           (Lab. Code § 2802)  
10                          (Against All Defendant)

11           41. Plaintiff repeats and incorporates herein by reference each and every allegation  
12 set forth above, as though fully set forth herein.

13           42. As alleged herein, by their policy of requiring Plaintiff and the “Expense  
14 Reimbursement Class” to purchase training courses and materials and failing to reimburse  
15 Plaintiff and the “Expense Reimbursement Class” for those purchases, Defendant willfully  
16 violated the provision of Labor Code § 2802 and IWC applicable Wage Orders.

17           43. As a result of the unlawful acts of Defendant, Plaintiff and the Class he seeks to  
18 represent are entitled to recovery of full amount of expenses incurred plus interest, attorneys’  
19 fees, and costs, under Labor Code § 2802.

20           44. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as  
21 described herein and below.

22                           **Fourth Cause of Action**  
23                           Failure to Timely Pay Wages During Employment  
24                           (Lab. Code § 204)  
25                          (Against All Defendant)

26           45. Labor Code § 204 requires that all wages are due and payable twice in each  
27 calendar month. The wages required by Labor Code §§ 226.7, 510, 1194, 1197 and other  
28 sections became due and payable to Plaintiff and Class Members in each month that he or she  
was not paid all lawful wages owed or provided with lawful meal period or rest period to which  
he or she was entitled. Defendant violated Lab. Code § 204 by failing to pay said wages when  
they were due and payable.

46. Labor Code section 210 (a) provides that “In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follow:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

47. As a result of the unlawful acts of Defendant alleged herein, Plaintiff and the Class he seeks to represent have been deprived of wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties.

48. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described herein and below.

**Fifth Cause of Action**  
**Failure to Timely Pay Wages Due at Termination**  
**(Lab. Code §§ 201-203)**  
**(Against All Defendant)**

49. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

50. Sections 201 and 202 of the California Labor Code require Defendant to pay its employees all wages due within 72 hours of termination of employment. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

51. As alleged herein, affected class members are entitled to compensation for all forms of wages earned, including, overtime compensation, minimum wage, correct sick pay wages and compensation for non-provided rest and meal periods but to date have not received such compensation therefore entitling them Labor Code section 203 penalties.



52. More than 30 days have passed since Plaintiff and affected Class Members have left Defendant's employ, and on information and belief, have not received payment pursuant to Labor Code § 203. As a consequence of Defendant's willful conduct in not paying all earned wages, certain Class Members are entitled to 30 days' wages as a penalty under Labor Code section 203 for failure to pay legal wages.

53. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described herein and below.

**Sixth Cause of Action**

Knowing and Intentional Failure to Comply With Itemized Employee

Wage Statement Provisions

(Lab. Code § 226(b))

(Against All Defendant)

54. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein

55. Section 226(a) of the California Labor Code requires Defendant to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the members of the proposed class. IWC Wage Orders require Defendant to maintain time records showing, among others, when the employee begins and ends each work period, meal periods, split shift intervals and total daily hours worked in an itemized wage statement, and must show all deductions and reimbursements from payment of wages, and accurately report total hours worked by Plaintiff and the members of the proposed class. On information and belief, Defendant have failed to record all or some of the items delineated in Industrial Wage Orders and Labor Code § 226.

56. Plaintiff and Class Members have been injured by Defendant's actions by rendering them unaware of the full compensation to which they were entitled under applicable provisions of the California Labor Code and applicable IWC Wage Orders.

57. Pursuant Labor Code § 226, Plaintiff and Class Members are entitled up to a maximum of \$4,000.00 each for record-keeping violation.

1           58.     WHEREFORE, Plaintiff and the Class he seeks to represent request relief as  
2 described herein and below.

3                               **Seventh Cause of Action**  
4                               Violation of Unfair Competition Law  
5                               (Bus. & Prof. Code, §§ 17200-17208)  
6                               (Against All Defendant)

7           59.     Plaintiff repeats and incorporates herein by reference each and every allegation  
8 set forth above, as though fully set forth herein.

9           60.     Business & Professions Code Section 17200 provides:  
10                   As used in this chapter, unfair competition shall mean and include any *unlawful*,  
11                   *unfair* or fraudulent business act or practice and unfair, deceptive, untrue or  
12                   misleading advertising and any act prohibited by Chapter 1 (commencing with  
13                   Section 17500) of Part 3 of Division 7 of the Business and Professions Code.)  
14                   (Emphasis added.)

15           61.     Defendant's violations of the Labor Code and Wage Order provisions set forth  
16 above constitute unlawful and/or unfair business acts or practices.

17           62.     The actions of Defendant, as alleged within this Complaint, constitute false,  
18 fraudulent, unlawful, unfair, fraudulent and deceptive business practices, within the meaning of  
19 Business and Professions Code section 17200, *et seq.*

20           63.     Plaintiff and Class Members have been personally aggrieved by Defendant's  
21 unlawful and unfair business acts and practices alleged herein.

22           64.     As a direct and proximate result of the unfair business practices of Defendant, and  
23 each of them, Plaintiff, individually and on behalf of all employees similarly situated, is entitled  
24 to restitution of all wages which have been unlawfully withheld from Plaintiff and members of  
25 the Plaintiff Class as a result of the business acts and practices described herein.

26           65.     WHEREFORE, Plaintiff and the Class he seeks to represent request relief as  
27 described herein and below.

28                               **VII.**

**PRAYER**

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;

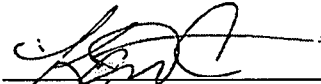
2. For compensatory damages in an amount according to proof with interest thereon;
3. For economic and/or special damages in an amount according to proof with interest thereon;
4. For premium wages pursuant to Labor Code §§ 226.7 and 512;
5. For premium pay and penalties pursuant to Labor Code § 203, 204;
6. For attorneys' fees, interests and costs of suit under Labor Code §§ 226, 1194, 2802;
7. For such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

**Dated: March 3, 2022**

**JAMES HAWKINS, APLC**



James R. Hawkins, Esq.

Isandra Y. Fernandez, Esq.

Kacey E. Cook, Esq.

Attorneys for Plaintiff

Paul Kirk Polson

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): James Hawkins, SBN 192925 Isandra Fernandez, SBN 220482; Kacey E. Cook, SBN337905 JAMES HAWKINS APLC 9880 Research Dr., Suite 200 Irvine, CA 92618 TELEPHONE NO: (949)387-7200 FAX NO: (949) 387-6676 ATTORNEY FOR (Name): Paul Kirk Polson		FOR COURT USE ONLY <b>FILED</b> 2022 MAR -4 A 10:45 KATE BIEKER CLERK OF THE SUPERIOR COURT COUNTY OF CONTRA COSTA, CA C. JACALA, DEPUTY CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Contra Costa STREET ADDRESS: 725 Court Street MAILING ADDRESS: CITY AND ZIP CODE: Martinez, CA 94553 BRANCH NAME: Wakefield Taylor Courthouse		CASE NUMBER: JUDGE: <b>C22-00412</b> DEPT:
CASE NAME: Polson v. Tesla Energy Operations, Inc.		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex; mark the factors requiring exceptional judicial management:
- |   |  |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties  | d. <input checked="" type="checkbox"/> Large number of witnesses   |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 7
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 3, 2022

Kacey E. Cook, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

COPY

CIVIL CASE COVER SHEET

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

## CASE TYPES AND EXAMPLES

## Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (*not asbestos or toxic/environmental*) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

## Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (*not medical or legal*)  
Other Non-PI/PD/WD Tort (35)

## Employment

Wrongful Termination (36)  
Other Employment (15)

## Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (*not unlawful detainer or wrongful eviction*)  
Contract/Warranty Breach—Seller  
Plaintiff (*not fraud or negligence*)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (*not provisionally complex*) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

## Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

## Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

## Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor  
Commissioner Appeals

## Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

## Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (*non-domestic relations*)  
Sister State Judgment  
Administrative Agency Award (*not unpaid taxes*)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

## Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (*not specified above*) (42)  
Declaratory Relief Only  
Injunctive Relief Only (*non-harassment*)  
Mechanics Lien  
Other Commercial Complaint Case (*non-tort/non-complex*)  
Other Civil Complaint (*non-tort/non-complex*)

## Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (*not specified above*) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition



SUPERIOR COURT - MARTINEZ  
COUNTY OF CONTRA COSTA  
MARTINEZ, CA 94553

PAUL K POLSON VS TESLA ENERGY

MSC22-00412

NOTICE OF ASSIGNMENT TO DEPARTMENT THIRTY-NINE FOR CASE  
MANAGEMENT DETERMINATION

THIS FORM, A COPY OF THE NOTICE TO PLAINTIFFS, THE ADR INFORMATION SHEET, AND A BLANK CASE MANAGEMENT STATEMENT ARE TO BE SERVED UPON ALL OPPOSING PARTIES, ALL PARTIES SERVED WITH SUMMONS AND COMPLAINT/CROSS-COMPLAINT.

1. This matter has been assigned to Department 39, Judge E. Weil presiding, for all purposes; Department 39 is designated as the complex litigation department of the Court and as such (a) hears all cases wherein a designation of complex case has been made and (b) conducts hearings, in cases that this court determines, on a preliminary basis may be complex, to determine whether the case should remain in the complex litigation program.
2. All counsel are required to appear in Dept. 39 on 06/03/22 at 8:30 a.m.
  - (a) If the case has been designated as complex, and no counter-designation has been filed, the Court will hold its first case management conference at that time.
  - (b) If the case has been assigned to Department 39 on a preliminary basis the Court will hold a hearing to determine if the matter is, or is not, complex. If the matter is determined to be complex, the Court will then proceed with the first case management conference.
3. Each party shall file and serve a Case Management Conference Statement five (5) days before this hearing and be prepared to participate effectively in the Conference, including being thoroughly familiar with the case and able to discuss the suitability of the case for private mediation, arbitration or the use of a special master or referee.
4. Prior to the conference counsel for plaintiff shall meet and confer with counsel for each other party in an effort to precisely define the the issues in the case, discuss the possibility of early mediation, the identities of possible other parties, and their respective plans for discovery.
5. Until the time of the conference the following INTERIM ORDERS shall be in effect:
  - A. Plaintiff shall diligently proceed in locating and serving each and every defendant. It is the Court's intention that each party be served in sufficient time to have entered an appearance within the time allowed by law and to attend the first conference.
  - B. All discovery shall be stayed excepting as all parties to the action might otherwise stipulate or the Court otherwise order.
  - C. No party shall destroy any writing or other evidence in its possession or under its control which bears in any way upon the matters which are the subject of this litigation.

- D. Within the time for any party to file an answer or demurrer such party may alternatively file a notice of general appearance. In such event the time for filing of an answer or demurrer shall be extended to twenty (20) days following the first conference unless the Court shall, at that time, set a different schedule.
- E. Counsel for each party shall do a conflict check to determine whether such counsel might have a possible conflict of interest as to any present or contemplated future party.

BY ORDER OF THE COURT